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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARIA PANALIGAN, on behalf of herself and all others similarly situated,

Plaintiff,

VS.

RETAIL ECOMMERCE
VENTURES LLC, a Delaware Limited
Liability Company, and DOES 1- 50,
inclusive,

Defendants.

Case No. 2:22-cv-3364

CLASS ACTION COMPLAINT

Violations of:

1. **California’s Unfair Competition Laws (“UCL”),**
CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
 2. **California’s False Advertising Laws (“FAL”),**
CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;
 3. **California Consumer Legal Remedies Act (“CLRA”),**
CAL. CIV. CODE §§ 1750, *et seq.*.

[DEMAND FOR JURY TRIAL]

1 Plaintiff Maria Panaligan (“Plaintiff”) brings this action on behalf of herself and all
 2 others similarly situated against Defendant Retail Ecommerce Ventures LLC (“Defendant”
 3 or “REV”), and states:

4 **I. NATURE OF THE ACTION**

5 1. Discounts of products benefit both sellers and their customers—when they are
 6 legitimate. To the detriment of consumers, as stated by the Ninth Circuit, sellers are “well
 7 aware of consumers’ susceptibility to a bargain, [and] therefore have an incentive to lie to
 8 their customers.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9th Cir. 2013). Products
 9 perceived by consumers as discounted are thus not always actual bargains, and consumers’
 10 perceptions can stem directly from sellers’ deceptions. This class action seeks monetary
 11 damages, restitution, declaratory and injunctive relief from Defendant arising from its own
 12 deceptive business practice of advertising fictitious “original” prices and corresponding
 13 phantom discounts on its e-commerce website, pier1.com, where it sells home furnishings,
 14 décor, and other related items.

15 2. False reference pricing occurs when a seller fabricates a false “original” price
 16 for a product and then offers that product at a substantially lower price under the guise of a
 17 sale. The resulting artificial price disparity misleads consumers into believing the product
 18 they are buying has a higher market value, and it induces them into purchasing the product.
 19 This practice artificially inflates the true market price for these products by raising
 20 consumers’ internal reference price and in turn the value consumers ascribe to these
 21 products (i.e., demand). Consequently, false reference pricing schemes enable retailers, like
 22 Defendant, to sell products above their true market price and value—and consumers are left
 23 to pay the price.

24 3. The following example of a hypothetical DVD seller, which is parallel to
 25 Defendant’s deceptive business practice, illustrates the illegal false reference pricing
 26 scheme and its attendant harm to consumers. A seller knows it can sell a particular DVD at
 27 \$5.00, which represents both the market price and the price at which the seller could
 28 regularly offer the DVD and make a profit. Instead, however, the seller creates an inflated

1 “original” price for the DVD of \$100.00 and advertises the DVD as “on sale” at ***90% off***
 2 rendering the **“sale” price** of the DVD \$10.00. When a consumer purchases the DVD, he
 3 presumes he got a “good deal” on a DVD previously sold—i.e., valued by others in the
 4 market—at an “original” price of \$100.00. The consumer’s presumption and purchase stem
 5 directly from the seller’s purposeful deception. For example, if the seller tried to sell that
 6 same DVD for \$10.00 ***without*** referencing a false original price of \$100.00, and the
 7 attendant 90% off discount, that seller would not be able to sell any DVDs at \$10.00 because
 8 the true, original market price of the DVD is \$5.00. In contrast, by presenting consumers
 9 with a false “original” price of \$100.00, consumers will purchase the DVD at \$10.00; the
 10 seller thus has fabricated an increase in demand for the DVD through the ***perceived value***
 11 of both the DVD itself and the substantial discount of \$90.00. Consumers’ increased
 12 willingness and demand to pay \$10.00 for the DVD will in turn impact the overall market
 13 price of the DVD. Therefore, the seller can create a false market price for the DVD at \$10.00
 14 by advertising a false “original” price and a corresponding phantom discount of 90% off.
 15 Plaintiff’s case seeks to remedy this deception, its attendant harm to consumers, and that
 16 disparity—the impact on the increase in market price through Defendant’s application of an
 17 illegal discounting scheme.

18 4. It is well-established that false reference pricing violates state and federal law.
 19 Even so, sellers, including REV, continue to use the tactic because they know they will be
 20 able to increase sales and profits by tricking consumers into making purchasing decisions
 21 based on the advertised reference prices. The information available to consumers varies for
 22 different types of products; nonetheless, consumers frequently lack full information about
 23 products and as a result often use information from sellers to make purchase decisions.

24 5. Through its false and misleading marketing, advertising, and pricing scheme
 25 alleged herein, REV violated, and continues to violate, California and Federal law, which
 26 prohibit the advertisement of goods for sale discounted from false former prices. California
 27 and Federal law also prohibit the dissemination of misleading statements about the existence
 28 and amount of price reductions. Specifically, Defendant violated and continues to violate:

a. California's Unfair Competition Law ("UCL"), CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;

b. California's False Advertising Law ("FAL"), CAL. BUS. & PROF. CODE §§ 17500, *et seq.*; and

c. California Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE §§ 1750, *et seq.*;

6. Plaintiff brings this action on behalf of herself and other similarly situated
mers who have purchased one or more products through pier1.com that were
tively represented as discounted from a false reference price. Plaintiff seeks to halt the
mination of this false, misleading, and deceptive pricing scheme, to correct the false
misleading perception it has created in the minds of consumers, and to obtain redress
ose who have purchased products tainted by this deceptive pricing scheme. Plaintiff
seeks to enjoin Defendant from using false and misleading misrepresentations
ding former price comparisons in its labeling, marketing, and advertising permanently.
ermore, Plaintiff seeks to obtain actual, statutory, and punitive damages, restitution,
ctive relief, reasonable costs and attorneys' fees, and other appropriate relief in the
nt by which Defendant was unjustly enriched as a result of its sales offered at a false
unt.

II. JURISDICTION AND VENUE

7. This Court has original jurisdiction of this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed Class (defined below) have a different citizenship from Defendant.

8. The Central District of California has personal jurisdiction over Defendant and is the proper venue for this action pursuant to 28 U.S.C. § 1391(b)(1) in which the Plaintiff Maria Panaligan resides and was injured in this district wherein a substantial part of the events or omissions giving rise to her claims occurred. Further, Defendant is a corporation or other business entity which does conduct business in the State of California. Defendant

1 conducts substantial business in this district and has sufficient minimum contacts in
 2 California, and/or otherwise intentionally avails itself to the California market through the
 3 operation of its e-commerce website within the State of California.

4 III. GENERAL ALLEGATIONS

5 A. Retailers Benefit from False Reference Pricing Schemes.

6 9. REV engages in a false and misleading reference price scheme in the
 7 marketing and selling of its products on its e-commerce website.

8 10. Sellers substantially benefit from employing false reference pricing schemes
 9 and experience increased sales because consumers use advertised reference prices to make
 10 purchase decisions. The information available to consumers can vary significantly amongst
 11 different types of products.¹ Nonetheless, consumers frequently lack fundamental
 12 information about a product and as a result often rely on information from sellers to make
 13 purchase decisions, especially when a product's value or quality is otherwise difficult to
 14 discern.²

15 11. Consumers incorporate Defendant's deceptive advertised reference prices into
 16 decision processes for a few reasons. First, a product's "price is also used as an indicator of
 17 product quality."³ In other words, consumers view Defendant's deceptive advertised

19 ¹ Even within a product, consumers may have imperfect information on the individual
 20 attributes. Economists describe "search goods" as those whose attributes "can be
 21 ascertained in the search process prior to purchase" (e.g., style of a shirt), "experience
 22 goods" as those whose attributes "can be discovered only after purchase as the product is
 23 used" (e.g., longevity of a shirt), and "credence goods" as those whose attributes "cannot
 24 be evaluated in normal use" (e.g., whether the shirt's cotton was produced using organic
 25 farming methods). Darby, Michael R., and Edi Karni. "Free Competition and the Optimal
 26 Amount of Fraud." *The Journal of Law and Economics* 16 no. 1 (1973): 67-88, pp. 68-69.

27 ² "Not only do consumers lack full information about the prices of goods, but their
 28 information is probably even poorer about the quality variation of products simply because
 the latter information is more difficult to obtain". Nelson, Phillip. "Information and
 Consumer Behavior." *Journal of Political Economy* 78, no. 2 (1970): 311-329, pp. 311-
 312. See also David Adam Friedman, *Reconsidering Fictitious Pricing*, 100 Minn. L. Rev.
 921, 935 (2016).

³ Grewal, Dhruv, and Larry D. Compeau. "Comparative price advertising: Informative or
 deceptive?" *Journal of Public Policy & Marketing* (1992): 52-62, p. 54. Also see Thaler,
 Richard. "Mental Accounting and Consumer Choice." *Marketing Science* 4, no. 3 (1985):
 199-214, p. 212 ("The [reference price] will be more successful as a reference price the less
 often the good is purchased. The [reference price] is most likely to serve as a proxy for

1 reference prices as a proxy for product quality. Second, reference prices “appeal[] to
 2 consumers’ desire for bargains or deals.”⁴ Academic researchers note how consumers
 3 “sometimes expend more time and energy to get a discount than seems reasonable given the
 4 financial gain involved,” and “often derive more satisfaction from finding a sale price than
 5 might be expected on the basis of the amount of money they actually save.”⁵ Under this
 6 concept, coined “transaction utility” by Noble Prize-winning economist Richard Thaler,
 7 consumers place some value on the psychological experience of obtaining a product at a
 8 perceived bargain.⁶

9 12. Research in marketing and economics has long recognized that consumer
 10 demand can be influenced by “internal” and “external” reference prices.⁷ Internal reference
 11 prices are “prices stored in memory” (e.g., a consumer’s price expectations adapted from
 12 past experience) while external reference prices are “provided by observed stimuli in the
 13 purchase environment” (e.g., a “suggested retail price,” or other comparative sale price).⁸
 14 Researchers report that consumer’s internal reference prices adjust toward external
 15 reference prices when valuing a product.⁹ For products purchased infrequently, external
 16

17 quality when the consumer has trouble determining quality in other ways (such as by
 18 inspection”).

19 ⁴ Grewal, Dhruv, and Larry D. Compeau. “Comparative price advertising: Informative or
 20 deceptive?” *Journal of Public Policy & Marketing* (1992): 52-62, p. 52.

21 ⁵ Darke, Peter and Darren Dahl. “Fairness and Discounts: The Subjective Value of a
 22 Bargain.” *Journal of Consumer Psychology* 13, no 3 (2003): 328-338, p. 328.

23 ⁶ “To incorporate … the psychology of buying into the model, two kinds of utility are
 24 postulated: *acquisition utility* and *transaction utility*. The former depends on the value of
 25 the good received compared to the outlay, the latter depends solely on the perceived merits
 26 of the ‘deal’”. Thaler, Richard. “Mental Accounting and Consumer Choice.” *Marketing
 27 Science* 4, no. 3 (1985): 199-214, p. 205.

28 ⁷ Empirical results “suggest that internal reference prices are a significant factor in purchase
 29 decisions. The results also add empirical evidence that external reference prices
 30 significantly enter the brand-choice decision.” Mayhew, Glenn E. and Russell S. Winer.
 31 “An Empirical Analysis of Internal and External Reference Prices using Scanner Data.”
 32 *Journal of Consumer Research* 19, no. 1 (1992): 62-70, p. 68.

33 ⁸ Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal and External
 34 Reference Prices using Scanner Data.” *Journal of Consumer Research* 19, no. 1 (1992): 62-
 35 70, p. 62.

36 ⁹ “Buyers’ internal reference prices adapt to the stimuli prices presented in the
 37 advertisement. That is, buyers either adjust their internal reference price or accept the
 38 advertised reference price to make judgments about the product’s value and the value of the
 39 deal.” Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. “The Effects of Price-

reference prices can be particularly influential because these consumers have little or no prior internal reference.¹⁰ In other words, “[t]he deceptive potential of such advertised reference prices are likely to be considerably higher for buyers with less experience or knowledge of the product and product category.”¹¹ Academic literature further reports that “there is ample evidence that consumers use reference prices in making brand choices”¹² and publications have summarized the empirical data as follows:

Inflated reference prices can have multiple effects on consumers. They can increase consumers’ value perceptions (transaction value and acquisition value), reduce their search intentions for lower prices, increase their purchase intentions, and reduce their purchase intentions for competing products ... Inflated and/or false advertised reference prices enhance consumers’ internal reference price estimates and, ultimately, increase their perceptions of value and likelihood to purchase[.]¹³

13. Sellers, including Defendant, understand consumers are vulnerable to perceived bargains. Thus, Defendant has a substantial financial interest in exploiting consumers’ well-known behavioral tendencies by inducing consumers into believing they are receiving a bargain—even when they are not. The phenomena of people disproportionately relying on an initial piece of information when making a decision, known

Comparison Advertising on Buyers’ Perceptions of Acquisition Value, Transaction Value, and Behavioral Intentions.” *The Journal of Marketing* 62 (1998): 46-59, p. 48.

¹⁰ As Thalen notes, “the [suggested retail price] will be more successful as a reference price the less often the good is purchased.” Thaler, Richard. “Mental Accounting and Consumer Choice.” *Marketing Science* 4, no. 3 (1985): 199-214, p. 212.

¹¹ Grewal, Dhruv, and Larry D. Compeau. “Pricing and public policy: A research agenda and an overview of the special issue.” *Journal of Public Policy & Marketing* 18, no. 1 (1999): 3-10, p. 7.

¹² Kalyanaram, Gurumurthy, and Russell S. Winer. “Empirical Generalizations from Reference Price Research.” *Marketing Science* 14, no. 3 (1995): G161-G169, p. G161.

¹³ Grewal, Dhruv, and Larry D. Compeau. “Pricing and public policy: A research agenda and an overview of the special issue.” *Journal of Public Policy & Marketing* 18, no. 1 (1999): 3-10, p. 7.

1 as “anchoring,”¹⁴ is especially relevant in this context.¹⁵ Reference prices are often the *first*,
 2 if not the *only*, insight into a product besides the sale price itself. Thus, consumers use the
 3 reference price as a baseline upon which to perceive a product’s value.

4 **B. California and Federal Pricing Regulations Prohibit False “Original**
 price” references and Out-Dated “Original price” references.

6 14. Under California law, a seller may only discount an item from its own *original*
 7 *price* for up to 90 days; or in the alternative, a seller may offer a discount from the original
 8 price of an item being offered by a competitor, within the relevant market, for up to 90 days.
 9 In either scenario, a seller can only offer a “sale” from an original price for 90 days. At that
 10 point, on day 91, the seller has two options: the product must either return to its full original
 11 price, or the seller may continue to sell the product at the discounted price, as long as it
 12 discloses to the consumer the date on which the product was last offered for sale at its
 13 alleged former price. See BUS. & PROF. CODE § 17501. Under California law, a seller
 14 cannot use an old, outdated, “original price” as the basis for a sale or discount, unless it
 15 discloses to the consumer the date on which the prior original price was offered in the
 16 market. *Id.*

17 15. Additionally, laws in the State of California expressly prohibit making false or
 18 misleading statements of fact “concerning reasons for, existence of, or amounts of price
 19 reductions.” See CAL. CIV. CODE § 1770(a)(13).

20 16. Additionally, under the FTCA, when a seller offers a discount from its own,
 21 former *original price*, the original price is required to have been a price at which the seller
 22 held that item out for sale on a regular basis, for a commercially reasonable period of time.
 23 See 16 C.F.R. § 233.1(a) and (b).

24
 25
 26
 27 ¹⁴ See Program on Negotiation, *Anchoring Effect*, HARV. L. SCH., <http://www.pon.harvard.edu/tag/anchoring-effect> (“[T]he anchoring effect, [is] the tendency for the first offer to “anchor” the bargaining that follows in its direction, even if the offer recipient thinks the offer is out of line.”).

28 ¹⁵ Friedman, *supra* note 2, at 933.

1 **C. Defendant's Fraudulent Price Discounting Scheme Violates California
2 State Law and Federal Regulations.**

3 17. Defendant engages in a false and misleading reference price scheme in the
4 marketing and selling of the products offered on its e-commerce website. Defendant
5 advertises home furnishings, décor, and other related items for sale by listing them with a
6 fictitious original price and a corresponding sale price. The original price communicates
7 "the product's worth and the prestige that ownership of the product conveys." *Hinojos*, 718
8 F.3d at 1106 (*citing* Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising:
9 Informative or Deceptive?*, 11 J. PUB. POL'Y & MKTG. 52, 55 (Spring 1992) ("By creating
10 an impression of savings, the presence of a higher reference price enhances subjects'
11 perceived value and willingness to buy the product."). "Misinformation about a product's
12 'normal' price is . . . significant to many consumers in the same way as a false product label
13 would be." *Hinojos*, 718 F.3d at 1106.

14 18. Defendant consistently advertises its products on its e-commerce website
15 alongside an "original" price and the corresponding sale price. The reference price is
16 crossed out and substantial discount is offered on the sale price. *See Exhibit A*. Defendant
17 advertises a seemingly original price, in truth a false reference price, with a "strikethrough."
18 The false reference price operates as a baseline consumers rely on to assess a product's
19 value. Moreover, it is shown alongside the original price to communicate to consumers that
20 Defendant is selling a product at a substantial discount, even though the product is not in
21 fact discounted. The sale price displayed directly next to the false reference price conveys
22 the "deep discount" at which Defendant presently offers a product, ostensibly for a limited
23 time.

24 19. However, the products sold on Defendant's e-commerce website are never sold
25 at the price displayed with a strikethrough—the price consumers are led to presume is the
26 full original price. The "deep discount" of products communicated to consumers viewing
27 Defendant's e-commerce website constitutes a misrepresentation by Defendant. The
28 "original" price merely serves as a false reference price Defendant uses as part of a larger

1 scheme to deceptively manufacture false discounts to incentivize consumers to make
 2 purchases.

3 20. To reiterate, the products sold on pier1.com show the original price with a
 4 strikethrough alongside the corresponding sale price immediately next to a picture of the
 5 product. For example, as seen in Exhibit A, a “Gold Bar Cart,” Defendant lists the false
 6 reference price of “\$596.92” with a strikethrough, which suggests to customers that
 7 Defendant previously offered its products at the strikethrough price of 596.92. Attached
 8 hereto as Exhibit A are numerous snapshots from pier1.com acquired through the Wayback
 9 Machine—a well-regarded archive of internet webpages as they existed at a singular point
 10 in time—depicting the false reference pricing scheme.

11 21. Defendant’s purposeful practice operates by deceiving consumers into
 12 (1) making purchases they otherwise would not have made and (2) paying substantially
 13 more for products they believed are heavily discounted and thus worth more than their
 14 actual value. The only plausible explanation for Defendant’s above illustrated practice is to
 15 drive sales, artificially inflate the perceived value of its products, and, as a result, artificially
 16 inflate the price at which consumers are willing to buy its products. Defendant has, and
 17 without intervention will continue to, increase sales by creating the illusion of short-lived
 18 bargains through purporting to offer products on sale from false original prices.

19 22. Defendant’s perpetual listings of its products as discounted on its e-commerce
 20 website constitute false, fraudulent, and deceptive advertising because the advertised
 21 reference prices it displays list substantially higher prices than those ever offered by
 22 Defendant. The reference prices only serve to deceive consumers; they function as
 23 benchmark prices from which the false discount and corresponding “sale” price are derived.
 24 Defendant’s scheme tricks consumers into justifiably believing they are getting a significant
 25 deal when in reality consumers are paying the usual retail price for products.

26 23. In sum, the false reference prices, the strikethrough of said prices, and the sale
 27 prices all displayed next to each other on product listing pages on Defendant’s e-commerce
 28 website are all part of Defendant’s purposeful, deceptive scheme. The products sold through

1 Defendant's e-commerce website are never offered for sale, nor sold, at the advertised false
2 reference price. Defendant advertises false reference prices with a purpose to induce
3 consumers into believing its products were once sold at said price. The strikethrough of the
4 false reference prices next to products creates a false sense of urgency in consumers.
5 Defendant intends for consumers to be misled that Defendant will sell its products at the
6 advertised, higher reference price "again" if they do not purchase its products soon; and
7 consumers are misled. Consumers believe they are receiving a substantial bargain when
8 they purchase products on Defendant's e-commerce website at the "discounted" sale price.
9 However, Defendant did not actually sell products on its e-commerce website at the
10 advertised reference prices within 90 days of discounting them. In fact, Defendant never
11 offered or sold products at their advertised false reference price, and consumers thus never
12 received a true bargain. All while fully aware of its deception, Defendant has achieved, and
13 might continue to achieve, its ultimate, continuing purpose of driving sales with sham
14 markdowns.

15 24. Nowhere on Defendant's e-commerce website does Defendant disclose that
16 the reference or "original" prices displayed are not: former prices; or recent, within 90 days,
17 regularly offered former prices; or prices at which identical products are sold elsewhere in
18 the market. The omission of these disclosures, coupled with Defendant's use of fictitious
19 advertised reference prices, renders Defendant's pricing scheme inherently misleading.

20 25. Moreover, the advertised discounts were fictitious because the reference prices
21 did not represent a *bona fide* price at which Defendant previously sold or offered to sell the
22 products, on a regular basis, for a commercially reasonable period of time, as required by
23 the Federal Trade Commission ("FTC"). In addition, the represented advertised reference
24 prices were not the prevailing market retail price within the three months (90 days)
25 immediately preceding the publication of the advertised former reference price, as required
26 by California law.

27 26. Thus, Defendant's scheme intends to, and does, provide misinformation to the
28 customer. This misinformation communicates to consumers, including Plaintiff, that the

1 products sold on Defendant's e-commerce website have greater value than the advertised
2 discounted price.

3 27. The reference prices listed and advertised on products sold through
4 Defendant's e-commerce website are false or severely outdated reference prices, utilized
5 only to perpetuate Defendant's false discount scheme.

6 28. Defendant knows that its reference price advertising is false, deceptive,
7 misleading, and unlawful under state and federal law.

8 29. Defendant fraudulently concealed from, and intentionally failed to disclose to,
9 Plaintiff and other members of the Class the truth about its advertised discount prices and
10 former reference prices.

11 30. At all relevant times, Defendant has been under a duty to Plaintiff and the Class
12 to disclose the truth about its false discounts.

13 **D. Investigation**

14 31. Products sold on REV's website are priced uniformly. In other words, the
15 products sold by Defendant bear a substantially discounted sale price that appears next to
16 the "crossed out" or "strikethrough" original price. Plaintiff's counsel's investigation
17 confirmed that all of the merchandise purchased by Plaintiff was priced with a false
18 reference price and a corresponding discounted price for at least the 90-day period
19 immediately preceding Plaintiff's purchase in violation of California law. The merchandise
20 purchased by Plaintiff was not, and is not, offered for sale in any other market.

21 32. Plaintiff's counsel conducted a thorough investigation of Defendant's website.
22 Plaintiff's counsel deployed a sophisticated software program to track each item offered for
23 sale on the pier1.com website. Plaintiff's counsel tracked the pricing of certain merchandise
24 offered for sale through pier1.com various periods from 2020 through the present. A sample
25 of the items tracked are attached as Exhibit A. For the duration of the tracking period, each
26 product remained significantly discounted from its reference price. The investigation
27 indicated the false reference pricing scheme was uniform across Defendant's e-commerce
28 website.

1 33. Plaintiff's counsel also researched Defendant's e-commerce website through
 2 the Wayback Machine. The website snapshots recorded by the Wayback Machine are
 3 consistent with Plaintiff's counsel's investigation. As a result, Plaintiff's counsel's
 4 investigation has tracked nearly every item on Defendant's website from 2020 through the
 5 present.

6 34. The false reference price and corresponding discount price scheme were both
 7 uniform and identical on almost all products sold through Defendant's e-commerce website.
 8 The only change was the requisite "discount" on certain products.

9 35. Thus, the fraudulent price scheme applies to all products offered for sale
 10 through Defendant's e-commerce website, including the product purchased by Plaintiff.

11 **IV. PARTIES**

12 **Plaintiff**

13 36. Plaintiff Maria Panaligan resides in Arcadia, California. Plaintiff, in reliance
 14 on Defendant's false and deceptive advertising, marketing and discounting pricing schemes,
 15 purchased the following item online from Arcadia, California on August 4, 2021:

16 Item:	Quantity:	False Reference Price:	Sale Price Paid by Plaintiff:
17 Florentine Blue and White Garden Planter Set 12" x 12"	1	\$142.90	\$114.95

19 37. Plaintiff examined the above-listed product on Defendant's website before
 20 deciding to purchase the aforementioned item after reviewing the item's advertised sale
 21 price. The item Plaintiff purchased was advertised as having an original price, which had a
 22 strikethrough over it on the website. Defendant advertised the item as having a sale price at
 23 a discount for the item.

24 38. After observing the original price of the item and the accompanying the sale
 25 price, Plaintiff believed she was receiving a significant discount on the product she had
 26 chosen. Because she was interested in the product and felt that the discounted price would
 27 likely not last, and that she was getting a significant bargain on the product, she proceeded
 28 to finish checking out and purchased it.

1 39. However, this product was never offered for sale at the original price listed on
2 Defendant's e-commerce website and certainly not within the 90 days preceding Plaintiff's
3 purchase. Neither Plaintiff's receipt nor any other language on the website observed or
4 relied upon by Plaintiff indicated that the product was not offered previously at the
5 advertised reference price.

6 40. Plaintiff reasonably relied upon Defendant's artificially inflated reference
7 prices and false discounts when purchasing products from Defendant's e-commerce
8 website. Plaintiff would not have made such purchase but for Defendant's representations
9 regarding the substantial discount being offered for the product. Plaintiff would like to
10 continue buying from Defendant's e-commerce website in the future but cannot be certain
11 of the veracity of Defendant's advertised bargains.

12 41. Plaintiff and the Class reasonably and justifiably acted and relied on the
13 substantial price differences that Defendant advertised, and they made purchases believing
14 they were receiving a substantial discount on a product of greater value than the value it had
15 in actuality. Plaintiff, like other Class members, was lured in, relied on, and was damaged
16 by the deceptive pricing scheme Defendant carried out.

17 42. Plaintiff was damaged in her purchase because Defendant's false reference
18 price discounting scheme inflated the true market value of item she purchased. Plaintiff is
19 susceptible to this reoccurring harm because she cannot be certain that Defendant has
20 corrected this deceptive pricing scheme and she desires to shop at Defendant's e-commerce
21 website in the future. However, she currently cannot trust that Defendant will accurately
22 price its products truthfully and in a non-misleading fashion in compliance with applicable
23 law. Plaintiff does not have the resources on her own to determine whether Defendant is
24 complying with State and Federal law with respect to its pricing practices.

25 43. Additionally, because of the wide selection of items available on Defendant's
26 website, and due to the likelihood that Defendant may yet develop and market additional
27 falsely priced items for sale online, Plaintiff may again, though by mistake, purchase a
28 falsely discounted item from Defendant under the impression that the advertised reference

1 price represented a *bona fide* former price at which the item was previously offered for sale
 2 by Defendant. Indeed, Plaintiff desires to continue purchasing items from pier1.com in the
 3 future. Moreover, Class members will continue to purchase products from pier1.com while
 4 reasonably but incorrectly believing that their advertised reference prices represent *bona*
 5 *fide* former prices at which they were previously offered for sale by Defendant.

6 44. Absent an equitable injunction enjoining Defendant from continuing in the
 7 unlawful course of conduct alleged herein, Plaintiff, Class members and the public will be
 8 irreparably harmed and denied an effective and complete remedy because they face a real
 9 and tangible threat of future harm emanating from Defendant's ongoing conduct that cannot
 10 be remedied with monetary damages. Accordingly, Plaintiff, Class members, and the
 11 general public lack an adequate remedy at law and an injunction is the only form of relief
 12 which will guarantee Plaintiff and other consumers the appropriate assurances.

13 45. Moreover, Plaintiff lacks an adequate remedy at law with respect to her claim
 14 for equitable restitution because she has not yet retained an expert to determine whether an
 15 award of damages can or will adequately remedy her monetary losses caused by Defendant.
 16 Particularly, as legal damages focus on remedying the loss to the plaintiff and equitable
 17 restitution focuses wholly distinctly on restoring monies wrongly acquired by the defendant,
 18 legal damages are inadequate to remedy Plaintiff's loss because Plaintiff does not know at
 19 this juncture, and is certainly not required to set forth evidence, whether a model for legal
 20 damages (as opposed to equitable restitution) will be viable or will adequately compensate
 21 Plaintiff's losses.

22 46. Finally, Plaintiff's case is substantially predicated on Defendant's violation of
 23 CAL BUS. & PROF. CODE § 17501, an equitable claim, as Plaintiff's counsel's investigation
 24 revolved around ensuring that Defendant did not sell products at the indicated reference
 25 price within the 90 days preceding Plaintiff's purchase and, likewise, that Defendant failed
 26 to disclose to consumers the date on which products was last offered at its advertised
 27 reference price. This claim and test of liability go to the heart of Plaintiff's case and the
 28 same test is not available under a CLRA legal claim for damages. Thus, Plaintiff does *not*

1 have an adequate remedy at law because the CLRA does not provide the same metric of
 2 liability as CAL BUS. & PROF. CODE § 17501, which is integral not only to Plaintiff's prayer
 3 for restitution, but also to Plaintiff's very theory of liability at trial.

4 **Defendant**

5 47. Defendant is incorporated in Delaware with its principal executive offices in
 6 Miami Beach, Florida. Plaintiff is informed and believes that Defendant operates the
 7 pier1.com website, and advertises, markets, distributes, and/or sells home furnishings,
 8 décor, and other products in California and throughout the United States.

9 48. Plaintiff does not know the true names or capacities of the persons or entities
 10 sued herein as Does 1-50, inclusive, and therefore sue such defendants by such fictitious
 11 names. Plaintiff is informed and believes, and upon such information and belief alleges, that
 12 each of the Doe defendants are in some manner legally responsible for the damages suffered
 13 by Plaintiff and the Class members as alleged herein. Plaintiff will amend this Complaint
 14 to set forth the true names and capacities of these defendants when they have been
 15 ascertained, along with appropriate charging allegations, as may be necessary.

16 **V. CLASS ALLEGATIONS**

17 49. Plaintiff brings this action on behalf of herself and all other similarly situated
 18 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil
 19 Procedure and seeks certification of the following Class against Defendant:

20 All persons, within the State of California, who, within the applicable statutory
 21 period (the "Class Period"), purchased from REV's e-commerce website
 22 pier1.com one or more products at discounts from an advertised reference price
 23 and who have not received a refund or credit for their purchase(s).

24 Excluded from the Class are Defendant, as well as its officers, employees, agents or
 25 affiliates, parent companies and/or subsidiaries, and each of their respective officers,
 26 employees, agents or affiliates, and any judge who presides over this action. Plaintiff
 27 reserves the right to expand, limit, modify, or amend this Class definition, including the
 28 addition of one or more subclasses, in connection with her motion for class certification, or

1 at any other time, based upon, *inter alia*, changing circumstances and/or new facts obtained
 2 during discovery.

3 50. ***Numerosity:*** Members of the Class are so numerous that joinder of all
 4 members is impracticable. Plaintiff is informed and believes that the proposed Class
 5 contains at least thousands of individuals who have been damaged by Defendant's conduct
 6 as alleged herein. The precise number of Class members is unknown to Plaintiff at this time,
 7 but Plaintiff expects it can readily be established through Defendant's records.

8 51. ***Existence and Predominance of Common Questions of Law and Fact:*** This
 9 action involves common questions of law and fact, which predominate over any questions
 10 affecting individual Class members. These common legal and factual questions include, but
 11 are not limited to, the following:

12 a. whether, during the Class Period, Defendant used advertised false
 13 reference prices on products sold through its e-commerce website;

14 b. whether, during the Class Period, the original price advertised by
 15 Defendant was the prevailing market price for the products in question during the
 16 three months period preceding the dissemination and/or publication of the advertised
 17 former prices;

18 c. whether Defendant's alleged conduct constitutes violations of the laws
 19 asserted;

20 d. whether Defendant engaged in unfair, unlawful and/or fraudulent
 21 business practices under the laws asserted;

22 e. whether Defendant engaged in false or misleading advertising;

23 f. whether Plaintiff and Class members are entitled to damages and/or
 24 restitution and the proper measure of that loss;

25 g. whether an injunction is necessary to prevent Defendant from
 26 continuing to use false, misleading or illegal price comparison; and

27 h. whether Plaintiff and the Class are entitled to an award of reasonable
 28 attorneys' fees, interest, and costs of suit.

1 52. ***Typicality:*** Plaintiff's claims are typical of the claims of the Class members
 2 because, *inter alia*, all Class members have been deceived (or were likely to be deceived)
 3 by Defendant's false and deceptive price advertising scheme, as alleged herein. Plaintiff is
 4 advancing the same claims and legal theories on behalf of herself and all Class members.

5 53. ***Adequacy:*** Plaintiff will fairly and adequately protect the interests of the
 6 members of the Class. Plaintiff has retained counsel experienced in complex consumer class
 7 action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
 8 antagonistic or adverse interest to those of the Class.

9 54. ***Superiority:*** The nature of this action and the nature of laws available to
 10 Plaintiff and the Class make the use of the class action format a particularly efficient and
 11 appropriate procedure to afford relief to her and the Class for the wrongs alleged. The
 12 damages or other financial detriment suffered by individual Class members is relatively
 13 modest compared to the burden and expense that would be entailed by individual litigation
 14 of their claims against Defendant. It would thus be virtually impossible for Plaintiff and
 15 Class members, on an individual basis, to obtain effective redress for the wrongs done to
 16 them. Absent the class action, Class members and the general public would not likely
 17 recover, or would not likely have the chance to recover, damages, restitution, or injunctive
 18 relief, and Defendant will be permitted to retain the proceeds of its fraudulent and deceptive
 19 misdeeds.

20 55. All Class members, including Plaintiff, were exposed to one or more of
 21 Defendant's misrepresentations or omissions of material fact in advertising false reference
 22 prices. Due to the scope and extent of Defendant's consistent false sale prices, advertising
 23 scheme, disseminated in a constant years-long campaign to consumers, it can be reasonably
 24 inferred that such misrepresentations or omissions of material fact were uniformly made to
 25 all members of the Class. In addition, it can be reasonably presumed that all members of
 26 the Class, including Plaintiff, affirmatively acted in response to the representations
 27 contained in Defendant's false advertising scheme when purchasing products sold through
 28 Defendant's e-commerce website.

1 56. ***Ascertainability:*** Defendant keeps extensive records of its customers through
2 its online sales data, as well as through, *inter alia*, general marketing programs. Defendant
3 has one or more databases through which all, or a significant majority of, Class members
4 may be identified and ascertained, and it maintains contact information, including email and
5 home address, through which notice of this action could be disseminated in accordance with
6 due process requirements

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of California's Unfair Competition Law ("UCL") CAL. BUS. & PROF. CODE §§ 17200, et seq.

11 57. Plaintiff repeats and re-alleges the allegations contained in every preceding
12 paragraph as if fully set forth herein.

13 58. Plaintiff brings this claim individually and on behalf of the members of the
14 proposed Class against Defendant Dress Barn for violations of the UCL, CAL. BUS. & PROF.
15 CODE §§ 17200, *et seq.*

16 59. The UCL defines “unfair business competition” to include any “unlawful,
17 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading”
18 advertising. CAL. BUS. PROF. CODE § 17200.

19 60. The UCL imposes strict liability. Plaintiff need not prove that Defendant
20 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—
21 but only that such practices occurred.

“Unfair” Prong

61. A business act or practice is “unfair” under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and that unfairness is determined by weighing the reasons, justifications and motives of the practice against the gravity of the harm to the alleged victims.

27 62. Defendant's actions constitute "unfair" business practices because, as alleged
28 above, Defendant engaged in misleading and deceptive price comparison advertising that

1 represented false reference prices and corresponding deeply discounted phantom “sale”
 2 prices. Defendant’s acts and practices offended an established public policy of transparency
 3 in pricing, and constituted immoral, unethical, oppressive, and unscrupulous activities that
 4 are substantially injurious to consumers.

5 63. The harm to Plaintiff and Class members outweighs the utility of Defendant’s
 6 practices because Defendant’s practice of advertising false discounts provides no utility and
 7 only harms consumers. There were reasonably available alternatives to further Defendant’s
 8 legitimate business interests other than the misleading and deceptive conduct described
 9 herein.

10 ***“Fraudulent” Prong***

11 64. A business act or practice is “fraudulent” under the UCL if it is likely to
 12 deceive members of the consuming public.

13 65. Defendant’s acts and practices alleged above constitute fraudulent business
 14 acts or practices as it has deceived Plaintiff and is highly likely to deceive members of the
 15 consuming public. Plaintiff relied on Defendant’s fraudulent and deceptive representations
 16 regarding its false or outdated “original prices” for products sold by Defendant through its
 17 e-commerce website. These misrepresentations played a substantial role in Plaintiff’s
 18 decision to purchase the product at a purportedly steep discount, and Plaintiff would not
 19 have purchased the product without Defendant’s misrepresentations.

20 ***“Unlawful” Prong***

21 66. A business act or practice is “unlawful” under the UCL if it violates any other
 22 law or regulation.

23 67. Defendant’s act and practices alleged above constitute unlawful business acts
 24 or practices as it has violated state and federal law in connection with its deceptive pricing
 25 scheme. The FTCA prohibits “unfair or deceptive acts or practices in or affecting
 26 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false
 27 advertisements. 15 U.S.C. § 52(a). Under the FTC, false former pricing schemes, like
 28 Defendant’s, are described as deceptive practices that would violate the FTCA:

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious – for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction – the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller's regular price.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of her business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

16 C.F.R. § 233.1(a) and (b) (emphasis added).

68. In addition to federal law, California law also expressly prohibits false former pricing schemes. The FAL, CAL. BUS. & PROF. CODE § 17501, entitled “*Worth or value; statements as to former price*,” states:

For the purpose of this article the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

1 No price shall be advertised as a former price of any advertised thing, unless
2 the alleged former price was the prevailing market price as above defined
3 within three months next immediately preceding the publication of the
4 advertisement or unless the date when the alleged former price did prevail is
5 clearly, exactly and conspicuously stated in the advertisement.

6 CAL. BUS. & PROF. CODE § 17501 (emphasis added).

7 69. As detailed in Plaintiff's Third Cause of Action below, the CLRA, CAL. CIV.
8 CODE § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent
9 not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking
10 false or misleading statements of fact concerning reasons for, existence of, or amounts of
11 price reductions.”

12 70. As detailed herein, the acts and practices alleged were intended to or did result
13 in violations of the FTCA, the FAL, and the CLRA.

14 71. Defendant's practices, as set forth above, misled Plaintiff, the proposed Class,
15 and the public in the past and will continue to mislead in the future. Consequently,
16 Defendant's practices constitute an unlawful, fraudulent, and unfair business practice within
17 the meaning of the UCL.

18 72. Defendant's violations of the UCL, through its unlawful, unfair, and fraudulent
19 business practices, are ongoing and present a continuing threat that Class members and the
20 public will be deceived into purchasing products based on price comparisons of arbitrary
21 and inflated “reference” prices and substantially discounted “sale” prices. These false
22 comparisons created phantom markdowns and lead to financial damage for consumers like
23 Plaintiff and the class.

24 73. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
25 injunctive relief enjoining Defendant from further engagement in this unfair competition,
26 as well as disgorgement and restitution to Plaintiff and the Class of all Defendant's revenues
27 wrongfully obtained from them as a result of Defendant's unfair competition, or such
28 portion of those revenues as the Court may find equitable.

SECOND CAUSE OF ACTION

Violation of California's False Advertising Law ("FAL") CAL. BUS. & PROF. CODE §§ 17500, et seq.

74. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if fully set forth herein.

75. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant for violations of the FAL, CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

76. CAL. BUS. & PROF. CODE § 17500 provides:

It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of . . . personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that . . . personal property or those services . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . .

(Emphasis added).

77. The “intent” required by section 17500 is the intent to make or disseminate personal property (or cause such personal property to be made or disseminated), and not the intent to mislead the public in the making or dissemination of such property.

78. Similarly, this section provides, “no price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price ... within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.” CAL BUS. & PROF. CODE § 17501.

1 79. Defendant's routine practice of advertising discounted prices from false
2 reference prices, which were never the prevailing market prices of those products and were
3 materially greater than the true prevailing prices (i.e., Defendant's actual sale price),
4 constitutes an unfair, untrue, and misleading practice. Defendant's deceptive marketing
5 practice gave consumers the false impression that the products on Defendant's e-commerce
6 website were regularly sold on the market for a substantially higher price than the price for
7 which they were sold in actuality. Moreover, Defendant's deceptive marketing practice
8 misled consumers by creating a false impression that the products sold through its e-
9 commerce website were worth more than their actual worth.

10 80. Defendant misled consumers by making untrue and misleading statements and
11 failing to disclose what is required as stated in the Code alleged above.

12 81. As a direct and proximate result of Defendant's misleading and false
13 advertisements, Plaintiff and Class members have suffered injury in fact and have lost
14 money. As such, Plaintiff requests that this Court order Defendant to restore this money to
15 Plaintiff and all Class members, and to enjoin Defendant from continuing these unfair
16 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and
17 the broader general public, will be irreparably harmed and/or denied an effective and
18 complete remedy.

19 82. Plaintiff and Class members request that this Court order Defendant to restore
20 this money to Plaintiff and Class members, and to enjoin Defendant from continuing these
21 unfair practices in violation of the FAL in the future. Otherwise, Plaintiff, Class members,
22 and the broader general public, will be irreparably harmed and/or denied an effective and
23 complete remedy.

THIRD CAUSE OF ACTION

**Violation of California's Consumers Legal Remedies Act ("CLRA"),
CAL. CIV. CODE § 1750, et seq.**

27 83. Plaintiff repeats and re-alleges the allegations contained in every preceding
28 paragraph as if fully set forth herein.

1 84. Plaintiff brings this claim individually and on behalf of the members of the
 2 proposed Class against Defendant for violations of the CLRA, CAL. CIV. CODE § 1750, *et
 3 seq.*

4 85. This cause of action is brought pursuant to the CLRA, CAL. CIV. CODE § 1750,
 5 *et seq.* Plaintiff and each member of the proposed Class are “consumers” as defined by
 6 CAL. CIV. CODE § 1761(d). Defendant’s sale of products through its e-commerce website,
 7 pier1.com, were “transactions” within the meaning of CAL. CIV. CODE § 1761(e). The
 8 products purchased by Plaintiff and the Class are “goods” or “services” within the meaning
 9 of CAL. CIV. CODE §§ 1761(a) - (b).

10 86. Defendant violated and continues to violate the CLRA by engaging in
 11 the following practices proscribed by CAL. CIV. CODE § 1770(a) in transactions with
 12 Plaintiff and the Class which were intended to result in, and did result in, the sale of
 13 products sold through its website:

14 a. advertising goods or services with intent not to sell them as advertised;
 15 § 1770(a)(9); and

16 b. making false or misleading statements of fact concerning reasons for,
 17 existence of, or amounts of price reductions; § 1770(a)(13).

18 87. On May 18, 2022, Plaintiff through counsel, sent a CLRA demand letter to
 19 Defendant that provided notice of Defendant’s violation of the CLRA and demanded
 20 Defendant correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and
 21 deceptive practices complained of herein. The letter also stated that if Defendant refused to
 22 do so, Plaintiff would file a complaint seeking damages in accordance with the CLRA. If
 23 Defendant does not respond to Plaintiff’s letter or agree to rectify the problems associated
 24 with the actions detailed above and give notice to all affected consumers within 30 days of
 25 the date of written notice pursuant to § 1782, Plaintiff will amend her complaint to seek
 26 actual, punitive, and statutory damages, as appropriate against Defendant.

27 88. Filed concurrently herewith is a declaration of venue pursuant to CAL. CIV.
 28 CODE §1780(d).

VII. PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and all other members of the Class, requests that this Court award relief against Defendant as follows:

- a. an order certifying the Class and designating Plaintiff as the Class Representative and her counsel as Class Counsel;
 - b. awarding restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of its unlawful, unfair, and fraudulent business practices described herein;
 - c. awarding Plaintiff and members of the Class actual, statutory, and punitive damages;
 - d. awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its misconduct and pay them all money they are required to pay;
 - e. order Defendant to engage in a corrective advertising campaign;
 - f. awarding attorneys' fees and costs; and
 - g. for such other and further relief as the Court may deem necessary or appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all of the claims so triable.

Dated: May 18, 2022

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